

Appln No. 10/810,046
Reply to Office Action of February 8, 2005

REMARKS/ARGUMENTS

The Office Action dated February 8, 2005, has been reviewed and the comments carefully considered.

In the Office Action, various issues and questions are raised concerning the description of the variety. By the amendments in the accompanying Substitute Specification, Applicant has made a bona fide effort to address all issues and questions.

With regard to the claim rejection under 35 USC §102(b), Applicant notes that this rejection is based on the Colour Wave Collection 2003-2004 (IDS Reference No. 6 filed 9/3/04, showing a publication date of 2002). The publication date listed on the IDS, and in the accompanying explanatory document, is incorrect. The correct date is May 2003. Enclosed please find an amended copy of the IDS and Explanation for IDS documents, previously submitted by Applicant. Accordingly, Applicant respectfully submits that there is no basis for a 102(b) rejection for the present variety.

In view of the foregoing amendment and response, it is believed that the application is in condition for allowance and, accordingly, reconsideration and allowance is earnestly solicited.

If any questions remain regarding the allowability of the application, Applicant would appreciate if the Examiner would advise the undersigned by telephone.

The Commissioner is hereby authorized to charge any fees under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 03-1728. Please show our docket number with any charge or credit to our Deposit Account.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By Cynthia A. Bonner
Cynthia A. Bonner
Reg. No. 44,548
626/795-9900

CAB/tt
TXT IRV1085239.1-* 07/14/05 10:03 AM

AMENDED

FORM PTO/SB/08A/B (10-01) Substitute for PTO-1449A/B	Attorney Docket Number	52224/DBP/A400
INFORMATION DISCLOSURE STATEMENT BY APPLICANT <small>O I P JUL 18 2005 (use as many sheets as necessary)</small>	Application Number	10/810,046
	Filing Date	March 26, 2004
	Applicant(s)	Tomoya Misato, et al.
	Group Art Unit	1661
	Examiner Name	L. C. Krawczewicz Myers

U.S. PATENT DOCUMENTS

EXAMINER INITIALS	Cite No. ¹	DOCUMENT NUMBER Number - Kind Code ² (If Known)	Publication Date MM-DD-YYYY	Name of Patentee

FOREIGN PATENT DOCUMENTS

EXAMINER INITIALS	Cite No. ¹	FOREIGN PATENT DOCUMENT Country Code ³ - Number ⁴ - Kind Code ⁵ (If Known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	T ⁶ - (<input checked="" type="checkbox"/>)
		JP PBR 13269	07-12-2001	Misato	<input checked="" type="checkbox"/>

OTHER DOCUMENTS

EXAMINER INITIALS	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article, title of the item (book, magazine, journal, serial, symposium, catalog; etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
		Explanations for IDS Documents
1		The Seed Catalogue 2004, Published 2003, 2 pgs., Thompson & Morgan, UK (Explanations for IDS Document)
2		Flower & Green, the newest catalog 2004, Published 2003; Suntory Flowers Ltd., 4 pages (partial English translation; Explanations for IDS Documents)
3		The 2004 Suntory Collection, Published 2003; Jackson & Perkins Wholesale, Inc.; 2 page (Explanations for IDS Documents)
4		Pineae Peak Performers featuring the 2004 Suntory Collection, Published 2003; Pineae Greenhouses, Inc; 3 pages (Explanations for IDS Documents)
5		Colour Wave Collection 2003-04, Published 2003; Ramm Botanicals Pty Ltd, 3 pages (Explanations for IDS Documents).

TXT IRV1087935.1-*07/14/05 8:44 AM

EXAMINER SIGNATURE	DATE CONSIDERED
<p>EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ¹Applicant's unique citation designation number (optional). ²See Kinds Codes of USPTO Patent Documents at www.pto.gov or MPEP 901.4. ³Enter Office that issued the document, by the two-letter code (WIPO standard ST.3). ⁴For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶Applicant is to place a check mark here if English Language Translation is attached.</p>	

AMENDED

Explanations for IDS Documents

Name of Document

"THE SEED CATALOGUE 2004"

Published in 2003, obtained on October, 2003

Published by Thompson & Morgan, UK, by mail order.

This catalog is for sales of plants in the UK, including a photo of flowers, and an explanation of the growth habit and the flower color, of the female and male parents, named 'Golden Eye' of the present variety 'Sunbidesupa' on page 28.

Name of Document

"FLOWER & GREEN, the newest catalog 2004"

Published in 2003 by Suntory Flowers Ltd., obtained on October 10, 2003, at Suntory Flowers Ltd.

This catalog is for sales of plants in Japan including photos of flowers, explanations of flower color and the growth habit and trade name 'Marietta® Yellow' of the control variety 'Sunbideki' of the present variety on page 33, although this catalog does not disclose the variety denomination thereof.

Name of Document

"THE 2004 SUNTORY COLLECTION"

Published in 2003 by Jackson & Perkins Wholesale, Inc. (Medford, OH, USA), obtained on July 15, 2003 at the exhibition at Columbus, OH, USA.

This catalog is for sales of plants in the US including a photo of flowers and explanation of the characteristics of the variety, and the trade name 'MARIETTA™ GOLD SPARK' of the present variety 'Sunbidesupa' on page 3, although this catalog does not disclose the variety denomination thereof.

Name of document

"Pineae Peak Performers featuring the 2004 Suntory Collection"

Published in 2003 by Pineae Greenhouses, Inc. (Centerville, UT, USA), obtained on July 15, 2003 at the exhibition at Columbus, OH, USA.

This catalog is for sales of plants in the US including photos of flowers and explanation of the characteristics of the variety and the trade name 'Marietta® Gold Spark' of the present variety 'Sunbidesupa' on page 14, although this catalog does not disclose the variety denomination thereof.

Name of document" "Colour Wave Collection"

Published in 2003 by Ramm Botanicals Pty Ltd.

Obtained at Ramm Botanicals Pty Ltd. In May 2003

This catalog for sales of plants in Oceania includes a photo of flowers, the trade name 'MARIETTA™ Yellow Spark' and the variety denomination 'Sunbideki' of the control variety of the present variety.

This catalog also includes a photo of flowers and the trade name 'MARIETTA™ Gold Spark' of the present variety, although the variety denomination thereof is not disclosed.